

Department of Defense **DIRECTIVE**

July 20, 1996
NUMBER 1005.13

DA&M

SUBJECT : Gifts from Foreign Governments

- References:
- (a) DoD Directive 1005.13, subject as above, October 13, 1988 (hereby canceled)
 - (b) Title 5, United States Code
 - (c) Title 41, Code of Federal Regulations, Parts 101-49 and 101-45
 - (d) DoD 5500.7-R, "Joint Ethics Regulation" , August 30, 1993, authorized by DoD Directive 5500 .7., August 30, 1993
 - (e) Federal Information Resources Management Regulation (FIRM) , Part 201-9 .202-2
 - (f) Title 26, United States Code

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to implement reference (b) and update DoD policy and responsibilities governing the acceptance and retention of gifts from foreign governments.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD) , the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components") .

c. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

D. POLICY

1. No DoD employee may request, or otherwise encourage, the offer of a gift from a foreign government

2. Table favors, mementos, remembrances, or other tokens bestowed at official functions, and other gifts of minimal value received as

souvenirs or marks of courtesy from a foreign government may be accepted and retained by the recipient. The burden of proof is on the recipient to establish that the gift is of minimal value.

3. Whenever possible, gifts of greater than minimal value (as defined in enclosure 1) shall be refused. When a gift of more than minimal value is tendered, the donor shall be advised that statutory provisions and DoD policy prohibit employees from accepting such gifts, unless it appears that refusal of the gift may offend or embarrass the donor, or could affect adversely the foreign relations of the United States. Under such circumstances, the gift may be accepted on behalf of the United States. The gift then becomes the property of the United States and shall be deposited with the employing DoD Component, in accordance with 41 CFR Parts 101-49 (reference (c)) and enclosure 2, within 60 days for return to the donor, for use within the Component, or for disposition by the General Services Administration-

4. When more than one tangible gift is included in a single presentation from the same donor to an employee, or jointly to an employee and spouse, they shall be considered to be a single gift and the aggregate value shall be used to determine whether or not the gift exceeds minimal value.

5. DoD guidance pertaining to gifts received from other sources is provided in DoD 5500.7-R "Joint Ethics Regulation" (reference (d)) .

E. RESPONSIBILITIES

1. The Director of Administration and Management, Office of the Secretary of Defense shall :

a. Develop policy and provide guidance to DoD employees regarding the acceptance and retention of gifts offered by foreign governments.

b. Implement this Directive for all employees of the OSD, as defined in enclosure 1.

2. The Heads of the DoD components shall designate an official who shall:

a. Ensure compliance with this Directive.

b. Establish procedures to ensure that employees are familiar with the requirements and restrictions of this Directive governing acceptance of gifts from foreign governments. Procedures for the receipt and disposition of gifts are provided in enclosure 2.

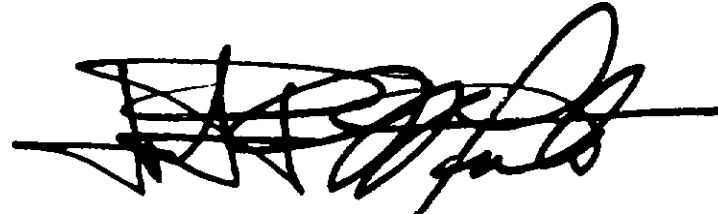
c. Report to the Attorney General, through the General Counsel of the Department of Defense, when it is determined administratively that an employee who is the recipient of a gift, or recipient of travel or travel expenses from a foreign government, has failed to comply with the procedures established by 5 U.S.C., Section 7342 (reference (b)) through actions or circumstances within the recipient's control.

F. INFORMATION REQUIREMENTS

The reporting requirement identified at subparagraph 1a. (3) of enclosure 2, has been cleared in accordance with FIRMR 201-9.202-2 (reference (e)), and assigned interagency report control number 0216-DOS-AN.

G. EFFECTIVE DATE

This Directive is effective immediately.



John P. White
Deputy Secretary of Defense

Enclosures - 2

1. Definitions
2. Procedures

DEFINITIONS

1. Employee. An employee of a DoD Component, as defined in 5 U.S.C. 2105 (reference (b)); an expert or consultant under contract with a DoD Component, including any individual performing services for a DoD Component under Section 3109 of reference (b) and members of the Military Services (including retired members and Reservists) regardless of duty status; the spouses of all such individuals (unless legally separated) and their dependents as defined in 26 U.S.C. 152 (reference (f)).

2. Employing Component. The DoD Component in which the recipient is appointed, employed, or enlisted. If a recipient is a spouse or dependent of a serving individual, then the employing Component is that in which the serving individual is appointed, employed, or enlisted.

a. The Military Departments are considered the employing Components for all military and civilian personnel assigned to them. The Military Departments also act as the employing Component for all personnel, military and civilian, either directly employed or assigned to the headquarters of Unified Combatant Commands.

b. The OSD is considered the employing Component for its military and civilian personnel, the Chairman of the Joint Chiefs of Staff, the Defense Advanced Research Projects Agency (DARPA), the Defense Security Assistance Agency (DSAA), Ballistic Missile Defense Organization (BMDO), the DoD Field Activities, and other DoD activities not specifically designated an employing Component.

c. The Defense Agencies (except DARPA, DSAA, and BMDO) are considered the employing Components for their civilian employees and for military members assigned to duty with them.

3. Foreign Govern-. Includes any unit of a foreign governmental authority, including any foreign national, state, local, and municipal government; any international or multinational organization whose membership is composed of any unit of foreign government; and any agent or representatives of any such unit or organization while acting as such.

4. Gift. Anything of tangible or intangible value that is tendered by or received from a foreign government, except for educational scholarships or medical treatment.

5. Minimal Value. A retail value in the United States at the time of acceptance not in excess of \$245 or such amount specified by the Administrator of General Services under 5 U.S.C. 7342 (reference (b)) .

6. Responsible Accountable Official. The official designated by the employing Component to approve the annual report of foreign gifts.

7. Travel Expenses. Costs of transportation, food, and lodging incurred during the travel period.

PROCEDURES FOR THE RECEIPT AND DISPOSITION OF GIFTS

1. Use or Disposal of Gifts that Become the Property of the United States

a. Any gift that becomes the property of the United States under 5 U.S.C. 7342 (reference (b)) may be retained for official use by the employing Component. In such cases, the Head of the employing Component shall:

(1) Avoid to the maximum extent possible arbitrary action in approving or retaining gifts.

(2) Ensure that gifts retained by the Component are not used for the benefit or personal use of any individual employee, as defined in enclosure 1, but that all employees are provided the opportunity to receive their indirect benefit.

(3) Report the gifts retained to the General Services Administration (GSA) under 41 CFR 101-49, subpart 2 (reference (c)) , within 30 calendar days after termination of the official use.

b. Gifts that the employing Component does not wish to retain or that are not approved for retention should be reported to the GSA within 30 calendar days after depositing the gift with the employing Component. In this case, the employing Component shall:

(1) Complete Standard Form (SF) 120, "Report of Excess Personal Property, " and forward to GSA, Property Management Division, Washington, D.C. 20406.

(2) Exercise responsibility for the custody and security of gifts and hold them until instructions are received from GSA regarding their disposition.

(3) Exercise responsibility for, and bear the cost of, the care and handling of gifts in its custody and for delivery of the gifts to the physical custody of GSA after the screening period.

c. Gifts for which there are no Federal requirements as determined by GSA may be offered for sale to recipients before donation when so requested by recipients.

(1) If a recipient indicates an interest in purchasing a gift, the gift is to be reported to GSA on SF 120 for utilization screening before sale to the recipient. The employing agency shall obtain a commercial appraisal and forward a copy of it, attached to a copy of the original SF 120. GSA shall notify the employing agency if the gift will be offered for negotiated sale to the recipient. The sales price,

to be paid to GSA, shall be the appraised value of the gift plus the cost of the appraisal.

(2) GSA normally will not take custody of gifts for which recipients have expressed an interest in purchasing. Such gifts shall remain in the physical custody and be the responsibility of the employing agency until recipients either purchase or decline to purchase them. GSA will accept physical custody of gifts that recipients decline to purchase and that are not retained for official use or returned to the donors.

2. Return of Gifts to Donor Before returning the gift to the original donor, the disposing Component shall consult with appropriate officials in the Department of State to ensure its return will not adversely affect U.S. foreign relations.

3. Disposal of Firearms . Firearms received as foreign gifts may be offered for transfer to Federal Agencies including law enforcement activities. Firearms not required for Federal use may be sold to interested recipients at the discretion of GSA. A certification that the recipient shall comply with all State and local laws regarding purchase and possession of firearms must be received by GSA prior to release of such firearms to the purchaser. Those firearms not transferred to a Federal activity or sold to recipients shall be destroyed in accordance with Section 101-45.309-4 of 41 CFR (reference (c)) .

4. Recording of Gifts of More Than Minimal Value

a. Each employing Component shall maintain records of gifts of more than minimal value received by their employees from foreign governments. A compilation shall be made each year and transmitted to the Secretary of State no later than January 31. This compilation shall include the following information:

(1) Name and title of recipient.

(2) Brief description of the gift, date of acceptance, estimated value, and current disposition or location.

(3) Identity of foreign donor and government.

(4) Circumstances justifying acceptance.

b. An employing Component is not required to report travel or travel expenses of more than minimal value that were authorized by that Component under conditions stipulated in item 7 of this enclosure below.

5. Donations or Transfer of Gifts

— A gift may be recommended for donation or transfer by the recipient to an eligible public agency or nonprofit tax-exempt institution for public display, reference, or use.

a. The employee recipient may indicate a recommendation for donation with a statement on the SF 120 citing the specific donee. Justification for the request must be supported by a letter from the recipient outlining any special significance of the gift to the proposed donee. The mailing address and telephone number of both the recipient and donee shall be included in the letter.

b. The employee recipient may indicate a recommendation for transfer of a gift to an eligible public agency for public display or other authorized agency use. This request shall be indicated on the SF 120 citing the specific donee, and shall include a brief justification of the display or official use of the gift.

6. Sale or Destruction of Tangible Gifts of Minimal Value or Less

Employing Components are authorized to sell or destroy tangible gifts of less than minimal value not retained by the recipient.

7. Travel Expenses. Employing Components shall include in their implementing documents criteria to be applied in determining the propriety of accepting travel expenses of more than minimal value, such as:

a. The travel shall begin and end outside the United States, except when travel across the continental United States is the shortest, least costly, or only available route to destination.

b. The travel shall be in the best interests of the Component and the U.S. Government considering all the circumstances.

c. The travel does not contravene any other Component regulation.